

stated below, the State may extend this contract for two (2) additional two-year periods, or portions thereof, after the Agency gives the contractor written notice at least forty-five (45) days prior to the expiration of the then-current term. The renewal acceptance must be delivered to the State for processing fifteen (15) days prior to the expiration date. With the exception of price, all terms and conditions of this contract shall apply to any option terms exercised by the Agency. Changes to terms and conditions are subject to mutual acceptance.

## **I. Termination**

The following provisions are applicable in the event that the contract is terminated.

### **a. Termination for Convenience**

At any time, the Agency may terminate this contract, in whole or in part, by giving the contractor (30) days written notice; provided, however, the Agency does not have the right to terminate a specific purchase order for convenience after it has been issued if the Product is ultimately accepted.

### **b. Termination for Cause**

Either party may terminate the contract for cause based upon material breach of this contract by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the contract effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

### **c. The Agency's Rights**

In the event the contract expires or is terminated for any reason, except non-appropriation, the Agency shall retain its rights in all equipment and telecommunications relay services accepted prior to the effective termination date.

### **d. The Contractor's Rights**

In the event the contract expires or is terminated for any reason, except non-appropriation, the Agency shall pay the contractor all amounts due for equipment and telecommunications relay services ordered and accepted prior to the effective termination date or

ordered before the effective termination date and ultimately accepted.

e. Appropriations

The terms of this contract and any purchase order issued under this contract are contingent upon sufficient appropriations being made by the Legislature of New Mexico for the performance of this contract. Notwithstanding any language to the contrary in this contract or in any purchase order or other document, the Agency may terminate its obligations under this contract, or any extension thereof, if sufficient appropriations are not made by the Legislature to pay amounts due. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding. The Agency shall provide sixty (60) days notice, if possible, of its intent to terminate for non-appropriation. Such termination shall relieve the Agency, the State of New Mexico, and its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant purchase order.

J. Shipment and Risk of Loss

The contractor shall ship all equipment F.O.B. destination. Except for loss or damage directly attributable to the negligence of the Agency, the contractor shall bear all risk of loss or damage until products have been installed by the contractor. Destination charges may either be included in the product price on the ESS, or pre-paid by the contractor and billed as a separate item at actual cost. The Agency shall provide a secure storage space for any equipment delivered

Whenever the Agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Agency.

Unless otherwise agreed upon by the Agency, the contractor is responsible for pickup of returned equipment. Software and documentation will be returned via parcel post at the expense of the Agency.

K. Warranties

The contractor shall provide the Agency with the following warranties:

A. Published Specifications The contractor warrants that all products, in their unaltered form, which are provided under this contract will perform in accordance with its published specifications.

Equipment. The contractor warrants that all equipment provided under this contract will be new and undamaged and will be free from defects in material

and workmanship. Replacement parts may be new, remanufactured, or refurbished parts but will be warranted to work as new.

The warranty period shall be the greater of ninety (90) days or the manufacturer's standard U.S. Warranty. The period begins on the date of delivery.

Warranty Service will be provided at either the Agency's facility or a contractor's repair facility, as specified in the ESS.

**L. Software**

The contractor warrants that all software provided under this contract will be new and undamaged and will perform in accordance with the software product description. The warranty period for software products is the manufacturer's standard warranty period as specified in the ESS. The period begins on the date of acceptance.

**M. Limitations of Warranty**

The warranties provided in subparagraphs A, B, and C above are limited warranties and do not apply to:

Conditions resulting from improper use of the software or operation of the equipment outside the specified environmental conditions, or

Conditions resulting from causes external to the software after delivery, or

Conditions resulting from modifications to equipment or software other than modifications performed by the contractor.4. Use of non-contractor furnished equipment, software, or facilities with the equipment.

**N. Service Warranty**

The Contractor warrants that service will be provided in a workman-like manner by qualified technicians in accordance with the service description applicable at the time of the order.

All repairs are warranted for at least ninety (90) days from the date of repair.

#### O. Remedies

Subsequent to acceptance, the Agency shall notify the contractor if any products provided under this contract are not in good working order during the warranty period. The contractor will, at its option, either repair or replace any products not in good working order without charge to the Agency.

#### P. Disclaimer of Warranties

The above warranties are exclusive warranties, and no other warranty express or implied, shall apply. **THE CONTRACTOR SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### Q. Terms and Materials

The contractor agrees to provide to the Agency upon delivery copies of all applicable manufacturer's warranty terms and registration materials.

#### R. License

The contractor and/or its suppliers retain title and full ownership rights with respect to the software and all additional software packages provided by contractor pursuant to this Contract. The contractor grants the Agency an unlimited, non-exclusive, perpetual license to use the software to perform State of New Mexico agency telecommunications relay services. This grant shall be limited to use with the equipment the software was obtained for, or back up equipment when the original equipment is temporarily inoperable. Agency may make a single archive copy of software with the same copyright notice and proprietary markings. The terms of any license contract packaged with any third party software shall govern. If the equipment purchased hereunder is sold or assigned to another party, contractor will grant the new owner or assignee the right to use any related software, provided the new owner agrees, in writing, to contractors software license and pays the contractor the right to use fee.

#### S. Patent, Copyright, Trademark and Trade Secret Indemnification

The contractor shall defend, at its own expense, the State and its agencies against any claim that any product or service provided under this contract infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the Agency based upon contractor's trade secret infringement relating to any product or service provided under this contract, the contractor agrees to reimburse the State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the State shall:

- a. give the contractor prompt written notice of any claim;
- b. allow the contractor to control the defense or settlement of the claim;
- c. co-operate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.
- d. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:
- e. provide the Agency the right to continue using the equipment or service;
- f. replace or modify the equipment or service so that it becomes non-infringing; or
- g. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any equipment or service modified by the Agency to the extent such modification is the cause of the claim.

#### T. Maintenance Contract

The contractor agrees to provide the agency an opportunity to enter into a maintenance contract in order for the Agency to protect its investment and keep its equipment and software in good working condition. The contractor agrees to accept for service any equipment that was purchased by the Agency under this contract. The contractor agrees to complete such service or repairs on a time and materials basis upon receipt of a valid purchase order.

#### U. Software maintenance service:

Offerors shall provide maintenance support telecommunications relay services and procedures for routine enhancements, emergency assistance, and corrections for all software products proposed or supplied.

#### V. Price Protection

The contractor shall give the Agency the benefit of any price reduction for any equipment or service listed

#### W. Changes to the Proposal

After the initial Proposal has been accepted by the Agency and filed with the State Purchasing Division, the contractor may change the prices for equipment and telecommunications relay services subject to the following provisions:

The contractor shall not raise prices for products or telecommunications relay services during the then current contract term.

The contractor may request permission to add new products and telecommunications relay services to the Contract provided that the pricing is agreed to between the Agency and the Contractor and the new products and telecommunications relay services are within the scope of the procurement as defined in the request for proposals. Additions to the Contract must be submitted to the contract administrator for review and approval. All items added must be deliverable within sixty (60) days of receipt of a purchase order.

The Agency reserves the right to require demonstrations of new products before allowing them to be added to the Contract and to reject products that the Agency believes to be inappropriate for use by the Agency. All such demonstrations must be conducted in Santa Fe or Albuquerque, New Mexico. Except for travel by State employees, the direct expense for such demonstrations is the sole obligation of the contractor.

All changes to the Contract must be filed with the State Purchasing Division to become effective.

The contract administrator shall be responsible for management of the contract. The contract administrator shall be responsible for filing all changes to the Contract with the State Purchasing Division. The contract administrator shall be responsible for initiating any extensions of the contract as described in paragraph 4 of this contract.

The contract administrator for this contract shall be appointed by the Deputy Director of the Administrative Services Division.

#### **X. Authorized Dealer Status**

For all products where the contractor is not the product's manufacturer, the contractor agrees to maintain authorized dealer status for all products listed on the ESS. In addition the contractor agrees to supply proof of authorized dealer status with the submission of ESS new product additions. If the product manufacturer does not normally offer authorized dealer status, the Agency may waive the requirement for a specific product or list of products based upon contractor supplied proof of that fact.

#### **Y. Technical Support**

The contractor agrees to provide a technical support telephone line, staffed from at least 9:00 A.M. to 5:00 P.M. Mountain time Monday through Friday accessible to Agency personnel for the purpose of obtaining competent technical assistance with the installation or operation of products supplied by the contractor.

#### **Z. FCC Certification**

The contractor agrees that services supplied by the contractor meets all

applicable FCC certifications. Improper, falsely claimed or expired FCC certifications are grounds for contract termination.

**AA. Site Preparation**

The Offeror shall prepare and maintain its site in accordance with written instructions furnished by the contractor prior to the scheduled delivery date of any equipment or service and shall bear the costs associated with the site preparation.

**BB. Impracticality of Performance**

A party shall be excused from performance under this contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**CC. Records and Audit**

The Contractor shall maintain detailed time records, which indicate the date, time and nature of telecommunications relay services rendered. These records shall be subject to inspection by the Agency, the Department of Finance and Administration, and the State Auditor. The Agency shall have the right to audit billings both before and after payment; payment under this contract shall not foreclose the right of the Agency to recover excessive or illegal payments.

**DD. Status of Contractor**

The contractor and its agents and employees are independent contractors and are not employees of the State of New Mexico. The contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this contract.

**EE. Assignment**

Neither party shall assign or transfer any interest in this contract or assign any claims for money due or to become due, without the prior written approval of the other party, which shall not be unreasonably withheld. No assignment or transfer shall relieve either party from its obligations or liabilities under the contract.

**FF. Use of Subcontractors**

The contractor shall not subcontract any portion of this contract without the prior written approval of the Agency, which shall not be unreasonably

withheld. Whenever the use of subcontractors is approved, the contractor shall remain solely responsible for the performance of this contract.

#### GG. Indemnification

The contractor shall hold the State and its agencies and employees harmless and shall indemnify the State and its agencies and employees against any and all claims, suits, actions, liabilities, and costs of any kind including attorney's fees for personal injury or damage to property arising from acts or omissions of the contractor, its agents, officers, employees, or subcontractors.

#### HH. Amendments

The contract shall only be amended by written instrument executed by duly authorized representatives of the parties.

#### II. Scope of Contract

This contract incorporates all of the contracts of the parties concerning the subject matter of this contract, and all prior contracts have been merged into this contract. No prior contracts, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

#### JJ. Invalid Term or Condition

If any term or condition of this contract shall be held invalid or unenforceable, the remainder of this contract shall not be affected and shall be valid and enforceable.

#### KK. Enforcement of Contract

A party's failure to require strict performance of any provision of this contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

#### LL. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

#### MM. Equal Opportunity Compliance

The contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico,

pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or Person with a Disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this contract. If the contractor is found to be not in compliance with these requirements during the life of this contract, the contractor agrees to take appropriate steps to correct these deficiencies.

**NN. Limit of Liability**

The contractor's liability to the Agency for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and telecommunications relay services that are the subject of Agency's claim. The foregoing limitation does not apply to Paragraphs 9 and 23 of this contract or to damages resulting from personal injury caused by the contractor's negligence. In no event will contractor be liable for any damages resulting from loss of data or use, lost profits or any incidental or consequential damages.

**OO. Applicable Law**

This contract shall be governed by the laws of the State of New Mexico.

**PP. Change in Contractor Representatives**

The Agency reserves the right to negotiate a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, serving the needs of the State of New Mexico adequately.

**QQ. Survival**

The contract paragraphs titled Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability shall survive the expiration of this contract.

**RR. Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph

**Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivered or three (3) business days after being mailed.**

## Appendix-C      FORMS

**SUMMARY OF PROPOSED RATES**

The offeror listed below submits the following firm, price per minute rates to complete the requirements as outlined in this RFP for the State of New Mexico.

<b>SERVICE CLASSIFICATION</b>	<b>REQUIRED SERVICE</b>	<b>Possible Points up to 100 **</b>	<b>PRICING STRUCTURE</b>	<b>OFFEROR PRICE OR COST</b>
<b>Traditional Relay Service (TRS)</b>	Mandatory	60	PRICE PER MINUTE	
<b>CAPTEL</b>	Optional	40	PRICE PER MINUTE	
<b>OUTREACH</b>	Mandatory	50	BUDGET PER YEAR	
<b>Video Relay Service (VRS) Terminals</b>	Mandatory	30	BUDGET PER YEAR/PER TERMINAL	

(\*\*) - Please reference to Section X, B4, "Pricing" for more information.

Offeror Name: \_\_\_\_\_